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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,442	01/13/2004	Harry Steinbok	S-1103	1068

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EXAMINER

EPPS, TODD MICHAEL

ART UNIT PAPER NUMBER

3632

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/755,442

Applicant(s)

STEINBOK, HARRY

Examiner

Todd M. Epps

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 14-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 22-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/13/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/13/04.

- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 10755442 June 7, 2005
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the first Office Action for serial number 10/755,442, Serving Utensil on Retractable Tether, file on January 13, 2004.

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, and 22-34 drawn to subcombination, classified in class 248, subclass 37.3.
- II. Claims 14-21, drawn to combination, classified in class 186, subclass 38.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because combination is able to perform without retractable support. The subcombination has separate utility such as can be used as key chain holder.

During a telephone conversation with Kenneth E. Merklen on 6/7/05 a provisional election was made without transverse to prosecute the invention of group I, claims 1-13, and 22-34. Affirmation of this election must be made by applicant in replying to this

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Office action. Claims 14-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

The drawings are objected to because, regarding figure 5a, and figure 7, the embodiment of drawing should be in bracket since it is an explosive view of figure 5, and figure 8 respectively.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it exceeds 150 words.

Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1, 7, 9, 10, 22, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 22 (line 2, and 9), 23, 26, and 27, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Regarding claim 1, the word "means" is preceded by the word(s) "retractable tether housing," and "tether" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function.

Regarding claim 7, the word "means" is preceded by the word(s) "shaft," and "eye" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function.

Regarding claim 9, the word "means" is preceded by the word(s) "suction cup coupling" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function.

Regarding claim 10, the word "means" is preceded by the word(s) "connector" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function.

Regarding claim 22, the word "means" is preceded by the word(s) "retractable tether," and "serving utensil" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function.

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Regarding claims 25, the word "means" is preceded by the word(s) "threaded nut" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function.

However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim 22, line 9, "salad bar" cites combination / subcombination problem.

Claim 1 recites the limitation "said" in line 8. It should be changed from "said" to --a--.

Claim 1 recites the limitation "relative" in line 8. It is confusing, and should be removed.

Claims 2-13 are rejected as depending on rejected claim 1, and claims 23-34 are rejected as depending on rejected claim 22.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-6, and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 6,216,605 B1 to Chapman. Chapman teaches a

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retractable tether housing (60), and a tether (60) with an external mounting (20), and a serving utensil (41) coupled to free end of tether (60) on coupling means.

Regarding claims 2, and 3, Chapman shows a serving utensil is a serving spoon (41).

Regarding claim 5, Chapman teaches an external mounting, which is a sneeze shield (12).

Regarding claim 6, Chapman teaches a fixed coupling (61) for retractable tether housing (60) to sneeze shield (Figure 2)

Regarding claim 22, Chapman teaches a retractable tether (60) having a first end, and a free end, and elevating above a container supported (20), and with a serving utensil (41) coupled to free end.

Regarding claim 23, Chapman teaches a retractable serving utensil for elevating, and coupling retractable tether to sneeze shield.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over to Chapman.

Regarding claim 4, Chapman fails to disclose a serving utensil, which is a pair of tongs. It would have been obvious to one ordinary skill in the art at the time the invention was made to have a pair of tongs in order to provide convenience for picking up food onto the plate.

Claims 8-9, 24, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of U.S. Patent number 2,308,771 to Mooney.

Regarding claim 8, and 9, Chapman fails to disclose a temporary coupling, or suction cup coupling, having a suction cup connected temporarily between sneeze shield and retractable tether housing. Attention is directed to the Mooney reference, which teaches a suction cup coupling to a wall, with a retractable tether housing attached to it. Accordingly, it would have been obvious to one ordinary skill in the art at the time the invention was made to have a retractable tether housing of Chapman with a suction cup coupling as taught by Mooney wherein doing so would provide ease for removal when cleaning sneeze shield.

Regarding claim 24, Chapman fails to disclose a suction cup coupling, having a suction cup coupled to retractable tether, and connected by suction cup coupling to an underside of sneeze shield. Attention is directed to the Mooney reference, which teaches a suction cup coupling to a wall, with a retractable tether attached to it. Accordingly, it would have been obvious to one ordinary skill in the art at the time the invention was made to have a retractable tether of Chapman with a suction



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cup coupling as taught by Mooney wherein doing so would provide ease for removal when cleaning sneeze shield.

Regarding claim 29, Chapman discloses a serving utensil, which is a spoon.

Regarding claim 30, Chapman fails to disclose a serving utensil, which is a pair of tongs. It would have been obvious to one ordinary skill in the art at the time the invention was made to have a pair of tongs, wherein doing so would provide thereof convenience to clamp any food onto the plate.

***Allowable Subject Matter***

Claims 7, 10-13, 25-28, and 31-34 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

In regards to claim 7, the prior art fails to teach a fixed coupling means is an eye means with a shaft means extending therefrom.

In regard to claims 10-11, the prior art fails to teach the external mounting means is a base plate with a shaft extending at normal therefrom.

In regard to claims 12-13, the prior art fails to teach the external mounting means is a shaft having a connector means at one end and a clamp connector.

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In regards to claim 25, the prior art fails to teach an eye hook with a threaded shaft and said threaded shaft extends through a hole in said sneeze shield and is held in place by a threaded nut.

In regard to claims 26, and 31-32, the prior art fails to teach a shaft having a first end, said first end includes a means for securing said shaft to said container supported on said salad bar, and having a distal end, said distal end includes a means for securing said retractable tether means to said shaft.

In regard to claims 27-28, and 33-34, the prior art fails to teach a shaft having a first end, said first end includes a means for securing said shaft to said container supported on said salad bar, and having a distal end, said distal end includes a housing for receiving and securing said retractable tether.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent number 2,900,045 to Conklin

U.S. Patent number 5,131,151 to Agase

U.S. Patent number 5,382,196 to Lodrick.

U.S. Patent number 6,112,357 to Halloran

U.S. Patent number 6,419,175 B1 to Rankin, VI

U.S. Patent number 6,739,243 B2 to Yagi

U.S. Publication number 2005/0103572 to Simon

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd M. Epps whose telephone number is 571-272-8282. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 571-272-6815. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Todd M. Epps  
Patent Examiner  
Art Unit 3632  
June 10, 2005

